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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/025,536

06/10/00

KINK

J

OPHD-03262

HM12/0207

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EXAMINER

MURPHY, J

ART UNIT

PAPER NUMBER

1646

14

DATE MAILED:

02/07/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

09/095,536

Applicant(s)

KINK, JOHN A.

Examiner

Joseph F Murphy

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 December 2000.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. & 119(e).

Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2.
- 18) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other: _____

DETAILED ACTION

Claims 1, 7 and 19 were amended in Paper No. 13, 12/7/2000.

The text of those sections of Title 35, U. S. Code not included in this action can be found in a prior Office Action.

Response to Amendment

The rejection of claims 1-23 under 35 USC § 112, first paragraph has been obviated by Applicant's amendment and is thus withdrawn.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

Claims 1-3, 7-15 and 19-20 rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 5,747,532 (Lai). U.S. Patent No. 5,747,532 has a filing date of Nov. 21, 1995.

Lai discloses methods and compositions for treating the production of species which induce the expression of nitric oxide synthase in mammals (column 1, lines 7-10). Lai discloses compositions that comprise, *inter alia*, antibodies to TNF, antibodies to IL-6 and antibodies to interferon-gamma (claim 22, column 14, line 66 to column 15, line 3), thus anticipating claims 1-3 and 19-20 of the instant application. Lai discloses methods of treatment with compositions

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may be delivered intravenously (column 7, line 64), and may be used for the treatment of sepsis (column 2, line 3 and column 11, lines 40-46) thus anticipating claims 7-15 of the instant application.

Claim Rejections - 35 USC § 103

Claims 1-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,747,532 (Lai), in view of WO 9814209.

The disclosure of Lai has been set forth above. Lai does not disclose the use on antibodies derived from avian sources. WO 9814209 discloses the use of polyclonal antibodies prepared from chicken eggs to neutralize systemic pathogens in humans (page 1, lines 7-10). WO 9814209 further discloses the advantages of using polyclonal antibodies derived from chicken eggs, including, inter alia, hen derived polyclonal antibodies will adhere to more sites on the target protein, and that the product of multiple hens can be blended to give a more uniform product (page 5, line 39 to page 6, line 4). Given the advantages of using polyclonal antibodies derived from hen's eggs, it would have been obvious to one of skill in the art at the time the invention was made to make and use the compositions of antibodies disclosed in Lai derived from hens eggs.

Conclusion

No claim is allowed.

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Advisory Information

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph F. Murphy whose telephone number is 703-305-7245.

The examiner can normally be reached on M-F 7:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yvonne Eyler can be reached on 703-308-6564. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3014 for regular communications and 703-308-0294 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0196.



Joseph F. Murphy, Ph. D.
Patent Examiner
Art Unit 1646
February 6, 2001


PREMA MERTZ
PRIMARY EXAMINER